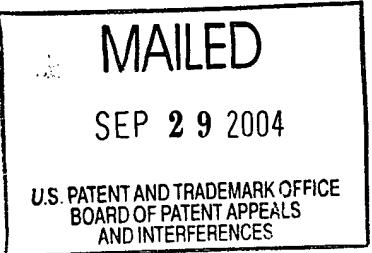


The opinion in support of the decision being entered today was
not written for publication and is **not** precedent of the Board.

Paper No. 43

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte MASAO FUKUDA and MICHIIRO KUBO

Appeal No. 2004-2062
Application No. 09/372,009

ON BRIEF

Before PAK, TIMM and PAWLICKOWSKI, Administrative Patent Judges.
PAWLICKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 24-30. Claim 24 is representative of the subject matter on appeal and is set forth below:

24. A method of longitudinally sealing overlapping portions of a tubularly formed bag-making material by means of a heater unit at a sealing position, said method comprising the steps of:

moving said heater unit from a retracted position to said sealing position by supplying air at a higher pressure to an air cylinder which serves to move said

heater unit reciprocatingly between said retracted position and said sealing position, and

thereafter supplying air at a lower pressure which is lower than said higher pressure to said air cylinder and controlling said lower pressure to cause said heater unit to longitudinally seal said bag-making material at a specified sealing pressure.

Claims 24-30 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fukuda in view of Grimshaw.

We [use] reply upon the appeal brief of Paper No. 38, filed on September 29, 2003.

OPINION

The examiner's position regarding the rejection is set forth on pages 3-4 of the answer. In making the rejection, the examiner relies upon language set forth in column 8 at lines 34-36 of Fukuda, wherein it is disclosed that "a person skilled in the art will realize that different combinations of motion-communicating and torque-communicating means can be substituted." Based upon this disclosure, the examiner concludes that it would have been obvious to have substituted the servo motor 45 with an additional air cylinder. However, the examiner does not explain exactly how this substitution would satisfy the method steps recited in claim 24. The examiner relies upon Grimshaw for teaching of controlling the air cylinder by variable pressure for controlling compressive force of an element against another and refers to column 11, lines 38-54 of Grimshaw.

We emphasize that every recited method step must be suggested by the combination. These steps are (1) moving the heater unit from a retracted position to a sealing position by supplying air at a higher pressure to the air cylinder which serves to move the heater unit reciprocatingly between the

retractive position and the sealing position and (2) supplying air at a lower pressure which is lower than the higher pressure to the air cylinder and controlling the lower pressure to cause the heater unit to longitudinally seal the bag making material at a specified sealing pressure.

The examiner's position in the rejection does not explain how these method step are met by the applied art. The examiner points to no motivation in any of the applied prior art to employ the claimed lower pressure subsequent to the claimed higher pressure. See pages 3-6 of the answer.

Therefore, in view of the above, we reverse this rejection.

REVERSED



CHUNG K. PAK)
Administrative Patent Judge)
)
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)
)



CATHERINE TIMM) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
)
)
)



BEVERLY A. PAWLIKOWSKI)
Administrative Patent Judge)
)

BAP/sld

Appeal No. 2004-206
Application No. 09/372,009

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Shereece Davis

COVER SHEET

Appeal No.: 2004-2062

Date Received: 9/23/04

Serial No.: 091372,009

Date Typed: 9/25/04

Decision Type:

Affirmed

Affirmed-In-Part

Reversed

Remanded

Panel:

1. Pawlowski
2. Fak
3. Timm (P.Z?)

P/C: No X Yes _____

Acts _____

OB/Heard

Palming _____

Indexing _____

FOLIA Disk _____

Monthly Report _____

Special Instruction From APJs: